RECORDATION NO. 21974-D FILED

ALVORD AND ALVORD

ATTORNEYS AT LAW 1600 K STREET, NW SUITE 200 WASHINGTON, D.C.

20006-2973

(202) 393-2266 FAX (202) 393-2156 SEP 28 '01

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SURFACE TRANSPORTATION BOARD

OF COUNSEL URBAN A. LESTER

September 28, 2001

ELIAS C. ALVORD (1942)

ELLSWORTH C. ALVORD (1964)

Mr. Vernon A. Williams Secretary Surface Transportation Board Washington, D.C. 20423

Dear Mr. Williams:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11301(a) are two (2) copies of an Assignment and Assumption Agreement, dated as of September 28, 2001, a secondary document as defined in the Board's Rules for the Recordation of Documents.

The enclosed document relates to the Lease Agreement which was previously filed with the Board under Recordation Number 2/97 4.

The names and addresses of the parties to the enclosed document are:

Seller:

The CIT Group/Equipment Financing, Inc.

1211 Avenue of the Americas New York, New York 10036

Buyer:

is:

Babcock & Brown Rail Funding, LLC 599 Lexington Avenue, 45th Floor New York, New York 10022

A description of the railroad equipment covered by the enclosed document

Three hundred and fifty eight (358) coalporter cars: NORX 4000 - NORX 4359 inclusive, but excluding NORX 4174 and NORX 4244.

Mr. Vernon A. Williams September 28, 2001 Page 2

A short summary of the document to appear in the index is:

Assignment and Assumption Agreement.

Also enclosed is a check in the amount of \$28.00 payable to the order of the Surface Transportation Board covering the required recordation fee.

Kindly return stamped copies of the enclosed document to the undersigned.

Very truly yours,

Robert W. Alvord

RWA/anm Enclosures

CERTIFICATION

I, Edward M. Luria, an attorney licensed to practice in the District of Columbia, the State of Delaware and the Commonwealth of Pennsylvania, do hereby certify under penalty of perjury that I have compared the attached copy of an Assignment and Assumption Agreement (plus exhibit) with the original thereof and have found the copy to be complete and identical in all respects to the original document.

Dated: Septenber 28,2001 Edward M. Luria

Assignment and Assumption Agreement

This Assignment and Assumption Agreement dated as of September _____, 2001 (this "Agreement"), is between The CIT Group/Equipment Financing, Inc., a Delaware corporation (the "Seller"), and Babcock & Brown Rail Funding LLC, a Delaware limited liability company (the "Buyer").

Witnesseth:

WHEREAS, the Buyer and the Seller have entered into that certain Purchase Agreement dated as of the date hereof (the "Purchase Agreement"), providing for the purchase of the Ownership Interest by the Buyer from the Seller, subject to the terms and conditions set forth therein; and

WHEREAS, the Purchase Agreement contemplates the execution and delivery of this Agreement by the Seller and the Buyer on the date hereof.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows.

- 1. <u>Definitions</u>. Capitalized terms used herein without definition shall have the meanings assigned to them in Section 4 of this Agreement.
- 2. <u>Assignment.</u> Effective as to each item of Equipment on the Closing Date, the Seller sells to the Buyer all of the Seller's rights, title and interest, except as reserved under Section 2.1 of the Purchase Agreement, in and to such item and assigns to the Buyer all of the Seller's rights and obligations, except to the extent constituting Existing Obligations, under each of the following as they relate to such item:
 - (a) the Lease;
 - (b) Rider 1 to Railcar Equipment Lease dated as of December 1, 1998 between The CIT Group/Equipment Financing, Inc. (as assignee of JAIX Leasing Company) and the Northern Indiana Public Service Company;
 - (c) Memorandum of Railcar Equipment Lease dated as of December 1, 1998 between The CIT Group/Equipment Financing, Inc. (as assignee of JAIX Leasing Company) and the Northern Indiana Public Service Company;
 - (d) Assignment and Assumption Agreement dated as of June 1, 1999 between JAIX Leasing Company, as assignor, and The CIT Group/Equipment Financing, Inc., as assignee;

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[Assignment & Assumption Agr.]

SURFACE TRANSPORTATION BOARD

- Memorandum of Assignment and Assumption Agreement dated as of June 1,
 1999 between JAIX Leasing Company, as assignor, and The CIT Group/Equipment Financing, Inc., as assignee; and
- (f) Consent and Agreement made as of June 1, 1999 among JAIX Leasing Company, Northern Indiana Public Service Company and The CIT Group/Equipment Financing, Inc. (collectively, the "Assigned Operative Agreements").

Notwithstanding the foregoing, the Seller shall continue to be entitled to the benefit of any rights to indemnification for tax and other matters which arose or may arise from or be related to any event or circumstance occurring or in existence prior to the Closing Date, as specified in the Purchase Agreement.

- 3. Acceptance of Assignment; Assumption of Obligations; Effect of Assignment. The Buyer accepts the assignment contained in Section 2 hereof and, in respect of the period on and after the Closing Date, assumes all obligations of the Seller under, and agrees to be bound to the same extent as the Seller by all the terms of, the Assigned Operative Agreements. Effective on and after the Closing Date, the Buyer shall be deemed to stand in the place of the Seller for all purposes under the Assigned Operative Agreements and each reference in the Assigned Operative Agreements to the Seller shall be deemed to mean the Buyer. The Seller, in respect of the period on and after the Closing Date, is released of all obligations of the lessor under the Assigned Operative Agreements, except to the extent constituting Existing Obligations.
- 4. <u>Definitions</u>. Except as otherwise specified or as the context may otherwise require, the following terms have the respective meanings set forth below whenever used in this Agreement (terms defined in the singular to have a correlative meaning when used in the plural and vice versa).

<u>Bill of Sale</u>: as to any one or more items of Equipment, a bill of sale in the form of Exhibit I hereto.

<u>Closing Date</u>: as to any one or more items of Equipment and related Ownership Interest, the date of the Bill of Sale with respect thereto.

Equipment: the items of equipment listed on Exhibit A hereto, together with each and every part, accessory, component and any equipment installed therein or attached thereto owned by the Seller (individually such railcars shall be referred to as an "item" or "items of Equipment").

<u>Existing Obligations</u>: any and all liabilities and obligations of Seller under the Ownership Interest, including the Assigned Operative Agreements, or otherwise relating to the Equipment in each such case, to the extent arising or occurring prior to the Closing Date (whether or not asserted or assessed), and, with respect to the obligations, to have been performed by Seller prior to the Closing Date.

<u>Lease</u>: the Railcar Equipment Lease dated as of December 1, 1998, entered into by and between Seller (as assignee of JAIX Leasing Company) and Lessee, as amended, modified or supplemented from time to time.

Lessee: Northern Indiana Public Service Company, an Indiana corporation.

Ownership Interest: the Seller's rights, title and interest in and to the Equipment and the Seller's rights and obligations under the Assigned Operative Agreements, except the Existing Obligations.

- 5. <u>Amendments</u>. No provision of this Agreement may be amended, modified or waived except by written agreement duly executed by each of the parties hereto.
- 6. <u>Notices</u>. All notices, requests or other communications to or upon any party hereto in connection herewith shall be given in the manner prescribed by Section 9.5 of the Purchase Agreement.
- 7. <u>Headings</u>. The section headings used in this Agreement are for convenience of reference only and shall not be used or construed to define, interpret, expand or limit any provision hereof.
- 8. <u>Counterparts</u>. This Agreement may be executed in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.
- 9. <u>Governing Law</u>. This Agreement shall be governed by, and construed and enforced in accordance with, the internal substantive laws of the State of New York, without giving effect to the conflict of law rules thereof, other than Section 5-1401 of the New York General Obligations Law.
- 10. <u>Recordation</u>. The Seller and the Buyer agree to record this Agreement with the Surface Transportation Board to evidence the assignment by the Seller to the Buyer of the Seller's rights and obligations under the Lease, if and only if the Lease has been recorded with the Surface Transportation Board.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, this Assignment and Assumption Agreement has been duly executed by the parties hereto as of the date first above written.

By:

Name:

Name:

Name:

Title:

Name:

Title:

THE CIT GROUP/EQUIPMENT FINANCING.

State of NY)
)
County of NY)

On this, the 28th day of September, 2001, before me, a Notary Public in and for said County and State, personally appeared Stephen Z. Serepca, a Senior Vice President, who acknowledged himself/herself to be a duly authorized officer of The CIT Group/Equipment Financing, Inc., and that, as such officer, being authorized to do so, he/she executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on the date above mentioned.

Notary Public

Notery Profice, State of Hew York
Heb - 10 A 5085133

Qualifice in New York County
Conflicate filed in New York County
Commission Excurse Sept. 3, 20 C

My Commission Expires:

Residing in: Nassau County, NY

IN WITNESS WHEREOF, this Assignment and Assumption Agreement has been duly executed by the parties hereto as of the date first above written.

THE CIT GROUP/EQUIPMENT FINANCING. INC., as Seller
By: Name: Title:
BABCOCK & BROWN RAIL FUNDING LLC. as Buyer
By: Name: Lawrence Littlefield

Title: Vice President

State of New York)
)
County of New York)

On this, the 27th day of September, 2001, before me, a Notary Public in and for said County and State, personally appeared Lawrence Littlefield, residing at 127 Danforth Drive, New Canaan, CT 06840, who acknowledged himself to be a duly authorized officer of Babcock & Brown Rail Funding LLC, and that, as such officer, being authorized to do so, he executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on the date above mentioned.

Name:

My Commission Expires:

Residing in:

Jeniffer Moreno Notary Publia, State of New York No. 01M06036946 Qualified in Queens County Commission Expires January 24, 2002

Exhibit A (to Assignment and Assumption Agreement)

EQUIPMENT

	<u>Year</u>			
# Cars	<u>Built</u>	<u>Description</u>	Reporting Marks	Casualty Marks
358	1999	Aluminum BethGon TM	NORX 4000-4359,	NORX 4174 and
		Coalporter railcars	inclusive.	4244.
		manufactured by Johnstown		
		America Corporation.		

Exhibit 1 (to Assignment and Assumption Agreement)

Bill of Sale

On this day of, 2001, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, The CIT Group/Equipment Financing, Inc. ("Seller"), does hereby sell, transfer and assign to Babcock & Brown Rail Funding LLC ("Buyer") all of Seller's rights, title and interest in and to the equipment described in Exhibit A hereto (the "Equipment"), subject to the terms and conditions of the Purchase Agreement dated as of September, 2001, (the "Purchase Agreement") and the Assignment and Assumption Agreement dated September, 2001, each between Seller and Buyer.
Seller represents and warrants to Buyer and its successors and assigns that at the time of delivery of the Equipment, Seller had legal title thereto and good and lawful right to sell the Equipment, and the Equipment was free and clear of all Liens (as defined in the Purchase Agreement), other than as described in Section 3.3 of the Purchase Agreement.
THE CIT GROUP/EQUIPMENT FINANCING, INC.
By: Name: Title:

Exhibit A (to Bill of Sale)

EQUIPMENT

	<u>Year</u>			
# Cars	<u>Built</u>	<u>Description</u>	Reporting Marks	Casualty Marks
358	1999	Aluminum BethGon TM	NORX 4000-4359,	NORX 4174 and
		Coalporter railcars manufactured by Johnstown	inclusive.	4244.
		America Corporation.		